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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Hayden A. Beaulieu,) CV 18-0332-TUC-RCC (LAB)
9 Petitioner,) **REPORT AND RECOMMENDATION**
10 vs.)
11 Mark Dannels, et al.,)
12 Respondents.)
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15 Pending before the court is a petition for writ of habeas corpus filed on July 5, 2018, by
16 Hayden A. Beaulieu, an inmate currently held in the Cochise County Jail in Bisbee, Arizona.
17 (Doc. 1); (Doc. 8) Beaulieu challenges a conviction imposed by the Cochise County Superior
18 Court on June 27, 2016. (Doc. 1, p. 1)

19 Pursuant to the Rules of Practice of this court, the matter was referred to Magistrate
20 Judge Bowman for report and recommendation. LRCiv 72.2(a)(2).

21 The Magistrate Judge recommends that the District Court, after its independent review
22 of the record, enter an order dismissing the petition. Beaulieu's claims are not exhausted.

23 Summary of the Case

24 On June 27, 2016, Beaulieu was convicted after a plea of guilty of attempted arson of an
25 occupied structure. (Doc. 10, pp. 24-25) The trial court sentenced Beaulieu to five years
26 supervised probation. *Id.*
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1 Beaulieu filed a notice of post-conviction relief (PCR) on September 15, 2016. (Doc.
2 11, p. 29) Beaulieu filed a second notice of post-conviction relief on September 18, 2018.
3 (Doc. 11-9, p. 2) He filed a petition on November 5, 2018 claiming (1) trial counsel Manch was
4 ineffective for failing to present mitigating evidence of his mental health evaluation and failing
5 to seek transfer to juvenile court and failing to advocate for his transfer to a juvenile facility, (2)
6 PCR counsel Danies was ineffective for failing to communicate with him, (3) his due process
7 rights were violated when the superior court failed to give him notice that Danies was
8 appointed, (4) his right to due process and to be free from cruel and unusual punishment was
9 violated when the superior court failed to determine his moral culpability and amenability to
10 rehabilitation before the state was allowed to proceed against him as an adult, (5) he was
11 subject to cruel and unusual punishment when he was attacked in the Cochise County Jail on
12 November 27, 2015, and in 2018 the Cochise County jail policy prevented him from taking his
13 medications, (there is no sixth claim for relief), (7) he was suffering from severe mental distress
14 when he committed the crime, (8) AZ Const. Art. 4 Sec. 22, which states that juveniles who are
15 charged with certain crimes must be charged as adults, violates the 5th and 8th Amendments, (9)
16 A.R.S. s 13-501 is illegal under the 5th and 8th Amendments because it gives prosecutors sole
17 discretion to charge minors as adults for crimes not described in the Arizona Constitution, (10)
18 AZ Const. Art. 2 Sec. 2.1(A)(5) is illegal under the 5th Amendment as it grants victims the right
19 to decline questioning or being summoned as a witness. (Doc. 9, p. 4); (Doc. 11-10, pp. 2-21)
20 The state filed a response to the petition on December 11, 2018. (Doc. 12, p. 7) The petition
21 remains outstanding.

22 A petition to revoke probation was filed on September 6, 2017, apparently because
23 Beaulieu left Arizona without permission and traveled to California. (Doc. 10, p. 28, 52)

24 On May 1, 2018, Beaulieu filed a petition for writ of certiorari with the Supreme Court
25 of the United States apparently challenging his transfer from California back to Arizona. (Doc.
26 10, p. 31, 34) The petition was denied on November 19, 2018. (Doc. 10, p. 43)

27 Beaulieu also filed a petition for special action in the Arizona Court of Appeals
28 challenging his transfer back to Arizona. (Doc. 10, p. 65) The court dismissed the action on

1 July 11, 2018, because Beaulieu failed to file a copy of the ruling of the Cochise County
2 Superior Court below. (Doc. 10, pp. 65-67) It appears that Beaulieu failed to file a special
3 action petition with the superior court before filing with the court of appeals.

4 On May 10, 2018, Beaulieu also filed a petition for writ of habeas corpus in the Arizona
5 Court of Appeals. (Doc. 11, p. 6) The court dismissed the action on July 11, 2018, because
6 Beaulieu failed to file a copy of the ruling of the Cochise County Superior Court below. (Doc.
7 11, pp. 15, 20, 22) It appears that Beaulieu failed to file a petition for writ of habeas corpus
8 with the superior court before filing with the court of appeals.

9 The trial court reinstated the intensive probation on September 12, 2018. (Doc. 11-7, p.
10 2) On November 8, 2018, Beaulieu filed a petition for writ of habeas corpus with the Arizona
11 Supreme Court. (Doc. 12, p. 14)

12 A second petition to revoke was filed on November 30, 2018. (doc. 12, p. 3)

13 On July 5, 2018, Beaulieu filed the pending petition for writ of habeas corpus in this
14 court pursuant to 28 U.S.C. § 2254. (Doc. 1) He claims (1) A.R.S. § 13-1501 violates due
15 process because he was charged as an adult for a crime that did not fall under that statute and
16 the statute gives prosecutors discretion to charge minors as adults, (2) counsel was ineffective
17 for failing to present mitigating evidence of his PTSD (post-traumatic stress disorder) and
18 failing to advocate for his transfer to juvenile court and to advocate for him when he was
19 assaulted by inmates at the Cochise County Jail, (3) the court failed to evaluate his competency
20 and deprived him of an opportunity to contest being charged as an adult, (4) he was subject to
21 cruel and unusual punishment when the Superior Court housed him at the Cochise County Jail
22 at age 15 where he was deprived of rehabilitation services, education, and medication and was
23 subject to assault. (Doc. 1, pp. 1-10) Beaulieu admits he has not presented any of his claims
24 to the Arizona Court of Appeals.

25 On January 18, 2019, the respondents filed an answer arguing Beaulieu's claims are
26 waived, unexhausted, or procedurally defaulted. (Doc. 9)

27 Beaulieu did not file a timely reply.
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1 Discussion

2 The writ of habeas corpus affords relief to persons in custody in violation of the
3 Constitution or laws or treaties of the United States. 28 U.S.C. § 2254(a). If the petitioner is
4 in custody pursuant to the judgment of a state court, the writ will not be granted unless prior
5 adjudication of the claim –

6 (1) resulted in a decision that was contrary to, or involved an unreasonable
7 application of, clearly established Federal law, as determined by the Supreme
8 Court of the United States; or

9 (2) resulted in a decision that was based on an unreasonable determination of the
10 facts in light of the evidence presented in the State court proceeding.

11 28 U.S.C. § 2254(d).

12 “[The] standard is intentionally difficult to meet.” *Woods v. Donald*, 135 S.Ct. 1372,
13 1376 (2015). “[C]learly established Federal law’ for purposes of § 2254(d)(1) includes only
14 the holdings, as opposed to the dicta, of th[e] [Supreme] Court’s decisions.” *Id.*

15 A decision is “contrary to” Supreme Court precedent if that Court already confronted
16 “the specific question presented in this case” and reached a different result. *Woods*, 135 S.Ct.
17 at 1377. A decision is an “unreasonable application of” Supreme Court precedent if it is
18 “objectively unreasonable, not merely wrong; even clear error will not suffice.” *Id.* at 1376.
19 “To satisfy this high bar, a habeas petitioner is required to show that the state court’s ruling on
20 the claim being presented in federal court was so lacking in justification that there was an error
21 well understood and comprehended in existing law beyond any possibility for fairminded
22 disagreement.” *Id.* (punctuation modified)

23 If the highest state court fails to explain its decision, this court looks to the last reasoned
24 state court decision. *Van Lynn v. Farmon*, 347 F.3d 735, 738 (9th Cir. 2003).

25 Federal habeas review is limited to those claims for which the petitioner has already
26 sought redress in the state courts. This so-called “exhaustion rule” reads in pertinent part as
27 follows:

28 An application for a writ of habeas corpus on behalf of a person in custody
pursuant to the judgment of a State court shall not be granted unless it appears
that – (A) the applicant has exhausted the remedies available in the courts of the
State. . . .

1 28 U.S.C. § 2254(b)(1)(A).

2 To be properly exhausted, a claim must be “fairly presented” to the state courts. *Weaver*
3 *v. Thompson*, 197 F.3d 359, 364 (9th Cir. 1999). In other words, the state courts must be
4 apprised of the issue and given the first opportunity to rule on the merits. *Id.*

5 In addition, the petitioner must explicitly alert the state court that he is raising a *federal*
6 constitutional claim. *Casey v. Moore*, 386 F.3d 896, 910-11 (9th Cir. 2004), *cert. denied*, 545
7 U.S. 1146 (2005). The petitioner must make the federal basis of the claim explicit either by
8 citing specific provisions of federal law or federal case law, even if the federal basis of a claim
9 is “self-evident,” *Gatlin v. Madding*, 189 F.3d 882, 888 (9th Cir. 1999), *cert. denied*, 528 U.S.
10 1087 (2000), or by citing state cases that explicitly analyze the same federal constitutional
11 claim, *Peterson v. Lampert*, 319 F.3d 1153, 1158 (9th Cir. 2003) (en banc).

12 If the petitioner is in custody pursuant to a judgment imposed by the State of Arizona,
13 the exhaustion requirement is ordinarily satisfied once the petitioner presents his claims to the
14 Arizona Court of Appeals for review. *Castillo v. McFadden*, 399 F.3d 993, 998 (9th Cir. 2005),
15 *cert. denied*, 546 U.S. 818 (2005); *Swoopes v. Sublett*, 196 F.3d 1008 (9th Cir. 1999), *cert.*
16 *denied*, 529 U.S. 1124 (2000). If state remedies have not been properly exhausted, the petition
17 may not be granted and ordinarily should be dismissed without prejudice. *See Johnson v. Lewis*,
18 929 F.2d 460, 463 (9th Cir. 1991). In the alternative, the court has the authority to deny on the
19 merits rather than dismiss for failure to properly exhaust. 28 U.S.C. § 2254(b)(2).

20 A claim is “procedurally defaulted” if the state court declined to address the claim on the
21 merits for procedural reasons. *Franklin v. Johnson*, 290 F.3d 1223, 1230 (9th Cir. 2002).
22 Procedural default also occurs if the claim was not presented to the state court and it is clear the
23 court would raise a procedural bar if it were presented now. *Id.*

24 Procedural default may be excused if the petitioner can “demonstrate cause for the
25 default and actual prejudice as a result of the alleged violation of federal law, or demonstrate
26 that failure to consider the claims will result in a fundamental miscarriage of justice.” *Boyd v.*
27 *Thompson*, 147 F.3d 1124, 1126 (9th Cir. 1998). “To qualify for the fundamental miscarriage
28 of justice exception to the procedural default rule, however, [the petitioner] must show that a

1 constitutional violation has probably resulted in the conviction when he was actually innocent
2 of the offense.” *Cook v. Schriro*, 538 F.3d 1000, 1028 (9th Cir. 2008).

3 If a claim is procedurally defaulted and is not excused, the claim should be dismissed
4 with prejudice because the claim was not properly exhausted and “the petitioner has no further
5 recourse in state court.” *Franklin*, 290 F.3d at 1231.

6 In this case, Beaulieu candidly admits that he has not presented his claims to the Arizona
7 Court of Appeals. (Doc. 1) Accordingly, they are not exhausted.

8 The respondents argue that some of these claims are waived and some are procedurally
9 defaulted, but because Beaulieu’s post-conviction relief petition is still pending in the state
10 court, this court considers such arguments to be premature. The District Court should dismiss
11 the petition for failure to exhaust rather than assume how the state courts will rule on his
12 pending petition.

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14 RECOMMENDATION

15 The Magistrate Judge recommends that the District Court, after its independent review
16 of the record, enter an order Dismissing the petition for writ of habeas corpus. (Doc. 1)
17 Beaulieu’s claims are not exhausted.

18 Pursuant to 28 U.S.C. § 636(b), any party may serve and file written objections within
19 14 days of being served with a copy of this report and recommendation. If objections are not
20 timely filed, they may be deemed waived. The Local Rules permit a response to an objection.
21 They do not permit a reply to a response.

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23 DATED this 18th day of March, 2019.

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26 Leslie A. Bowman
27 United States Magistrate Judge
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